IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 645 of 2006

Attungal Siddhi .. Appellant

versus

Tushar J. Chauhan .. Respondent

...

Mr.G.S. Hegde with Prakash R. Hegde for the appellant.

Mr.Pankaj Kowli i/b P.M. Patil Gangarkar & Co. for the respondent.

CORAM : D.G. KARNIK, J

DATED : 23rd November 2006

P.C.:

1. Heard counsel for the parties.

2. By this appeal, the appellant - who is the original plaintiff - challenges the order dated 31st July 2006 passed by the City Civil Court Bombay returning the

plaint for presentation to the proper court.

3. The appellant filed a suit against the respondent for an injunction restraining the respondent from disturbing his possession of the suit property. In the plaint, the appellant alleged that he was a tenant of the suit property and the respondent- owner be restrained from disturbing his possession or evicting him except by due process of law.

4. The learned Judge of the City Civil Court suo moto framed a point for determination viz: whether the suit was maintainable in the City Civil Court in view of the averments made in the plaint. After granting an opportunity to the parties to be heard, he held that since the appellant plaintiff claimed that he was in possession as a tenant and was seeking protection against dispossession as a tenant, the suit was required to be filed in the Small Causes Court under the provisions of the Maharashtra Rent Control Act r/w section 41 of the Presidency Small Causes Courts Act. In view of this, the court ordered that the plaint be returned to the appellant for presentation to the proper court. That order is impugned in this appeal.

5. Learned counsel for the appellant submitted that the trial court erred in suo moto considering whether the suit was maintainable. He submitted that there was no application was made by respondent defendant objecting to the jurisdiction of the City Civil Court and therefore the trial court ought not to have suo moto embarked upon an enquiry whether it had the jurisdiction.

6. It may be noted that Rule 10 of Order 7 of the Code of Civil Procedure provides: "subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted." The court is entitled to exercise the powers of return of the plaint under Order 7 Rule 10 at any stage if it finds that it has no jurisdiction to try and entertain the suit. All that may be necessary for the court before exercising the power under Rule 10 of Order 7 is to give an opportunity to the parties to be heard. Once the parties are put to notice and the parties are given opportunity of being heard and to satisfy the court that it has or does not have the jurisdiction to entertain and try and suit, the Court can exercise its power under Rule 10 of Order 7. There are not fetters on the powers of the court to exercise the power of returning of the plaint under Order

7 Rule 10 of the Code of Civil Procedure. If the court ex-facie finds that the suit is not maintainable then it would be futile for it to require the defendant to file the written statement, require the parties to adduce the evidence to undergo the whole trial and then decide that the court has no jurisdiction. Therefore, the fact that the court chose to exercise its powers under Order 7 Rule 10 suo moto cannot be a ground for setting aside the order of the trial court.

7. As regards the second contention, it is settled principle of law that for the purpose of determining the jurisdiction of the court, the court is initially required to look only to the averments made in the plaint. In paragraph no.2 of the plaint, the appellant has alleged that he is the monthly tenant of the defendant paying the monthly rent of Rs.70/-. He has further alleged that he acquired tenancy rights in the year 1970 and from Mr.Lalji Chauhan and since then is in use and occupation of the suit premises as a tenant and is paying the rent regularly. In paragraph no.8 of the plaint, he has averred that he is in possession of the documents to show his possession of the suit premises is as a tenant and that the documents have been submitted to the Small Causes Court. The appellant is thus clearly

claiming that he was in possession of the suit premises as a tenant and that the respondent was trying to disturb his possession without by due process of law. The respondent was illegally trying to dispossess him from the possession of the suit premises as a tenant. It is not disputed that such a suit would lie only in the Small Causes Court.

8. In the circumstances, I find no error in the order of the trial court. Appeal is therefore dismissed summarily.

(D.G. KARNIK, J)